

**§ 37.27 Requirements for criminal history records checks of individuals granted unescorted access to category 1 or category 2 quantities of radioactive material.**

(a) *General performance objective and requirements.* (1) Except for those individuals listed in § 37.29 and those individuals grandfathered under § 37.25(b), each licensee subject to the provisions of this subpart shall fingerprint each individual who is to be permitted unescorted access to category 1 or category 2 quantities of radioactive material. Licensees shall transmit all collected fingerprints to the Commission for transmission to the FBI. The licensee shall use the information received from the FBI as part of the required background investigation to determine whether to grant or deny further unescorted access to category 1 or category 2 quantities of radioactive materials for that individual.

(2) The licensee shall notify each affected individual that his or her fingerprints will be used to secure a review of his or her criminal history record, and shall inform him or her of the procedures for revising the record or adding explanations to the record.

(3) Fingerprinting is not required if a licensee is reinstating an individual's unescorted access authorization to category 1 or category 2 quantities of radioactive materials if:

(i) The individual returns to the same facility that granted unescorted access authorization within 365 days of the termination of his or her unescorted access authorization; and

(ii) The previous access was terminated under favorable conditions.

(4) Fingerprints do not need to be taken if an individual who is an employee of a licensee, contractor, manufacturer, or supplier has been granted unescorted access to category 1 or category 2 quantities of radioactive material, access to safeguards information, or safeguards information-modified handling by another licensee, based upon a background investigation conducted under this subpart, the Fingerprint Orders, or part 73 of this chapter. An existing criminal history records check file may be transferred to the licensee asked to grant unescorted ac-

cess in accordance with the provisions of § 37.31(c).

(5) Licensees shall use the information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for unescorted access authorization to category 1 or category 2 quantities of radioactive materials, access to safeguards information, or safeguards information-modified handling.

(b) *Prohibitions.* (1) Licensees may not base a final determination to deny an individual unescorted access authorization to category 1 or category 2 quantities of radioactive material solely on the basis of information received from the FBI involving:

(i) An arrest more than 1 year old for which there is no information of the disposition of the case; or

(ii) An arrest that resulted in dismissal of the charge or an acquittal.

(2) Licensees may not use information received from a criminal history records check obtained under this subpart in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall licensees use the information in any way that would discriminate among individuals on the basis of race, religion, national origin, gender, or age.

(c) *Procedures for processing of fingerprint checks.* (1) For the purpose of complying with this subpart, licensees shall use an appropriate method listed in § 37.7 to submit to the U.S. Nuclear Regulatory Commission, Director, Division of Facilities and Security, 11545 Rockville Pike, ATTN: Criminal History Program/Mail Stop TWB-05 B32M, Rockville, Maryland 20852, one completed, legible standard fingerprint card (Form FD-258, ORIMDNRCOOZ), electronic fingerprint scan or, where practicable, other fingerprint record for each individual requiring unescorted access to category 1 or category 2 quantities of radioactive material. Copies of these forms may be obtained by writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, by calling 1-630-829-9565, or by email to [FORMS.Resource@nrc.gov](mailto:FORMS.Resource@nrc.gov). Guidance on submitting electronic fingerprints can

be found at <http://www.nrc.gov/site-help/e-submittals.html>.

(2) Fees for the processing of fingerprint checks are due upon application. Licensees shall submit payment with the application for the processing of fingerprints through corporate check, certified check, cashier's check, money order, or electronic payment, made payable to "U.S. NRC." (For guidance on making electronic payments, contact the Security Branch, Division of Facilities and Security at 301-492-3531.) Combined payment for multiple applications is acceptable. The Commission publishes the amount of the fingerprint check application fee on the NRC's public Web site. (To find the current fee amount, go to the Electronic Submittals page at <http://www.nrc.gov/site-help/e-submittals.html> and see the link for the Criminal History Program under Electronic Submission Systems.)

(3) The Commission will forward to the submitting licensee all data received from the FBI as a result of the licensee's application(s) for criminal history records checks.

[78 FR 17007, Mar. 19, 2013, as amended at 80 FR 74979, Dec. 1, 2015]

**§ 37.29 Relief from fingerprinting, identification, and criminal history records checks and other elements of background investigations for designated categories of individuals permitted unescorted access to certain radioactive materials.**

(a) Fingerprinting, and the identification and criminal history records checks required by section 149 of the Atomic Energy Act of 1954, as amended, and other elements of the background investigation are not required for the following individuals prior to granting unescorted access to category 1 or category 2 quantities of radioactive materials:

(1) An employee of the Commission or of the Executive Branch of the U.S. Government who has undergone fingerprinting for a prior U.S. Government criminal history records check;

(2) A Member of Congress;

(3) An employee of a member of Congress or Congressional committee who has undergone fingerprinting for a prior U.S. Government criminal history records check;

(4) The Governor of a State or his or her designated State employee representative;

(5) Federal, State, or local law enforcement personnel;

(6) State Radiation Control Program Directors and State Homeland Security Advisors or their designated State employee representatives;

(7) Agreement State employees conducting security inspections on behalf of the NRC under an agreement executed under section 274.i. of the Atomic Energy Act;

(8) Representatives of the International Atomic Energy Agency (IAEA) engaged in activities associated with the U.S./IAEA Safeguards Agreement who have been certified by the NRC;

(9) Emergency response personnel who are responding to an emergency;

(10) Commercial vehicle drivers for road shipments of category 1 and category 2 quantities of radioactive material;

(11) Package handlers at transportation facilities such as freight terminals and railroad yards;

(12) Any individual who has an active Federal security clearance, provided that he or she makes available the appropriate documentation. Written confirmation from the agency/employer that granted the Federal security clearance or reviewed the criminal history records check must be provided to the licensee. The licensee shall retain this documentation for a period of 3 years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material; and

(13) Any individual employed by a service provider licensee for which the service provider licensee has conducted the background investigation for the individual and approved the individual for unescorted access to category 1 or category 2 quantities of radioactive material. Written verification from the service provider must be provided to the licensee. The licensee shall retain the documentation for a period of 3 years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material.